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BRIEFING: Immigration Bill Second Reading, 13 October 2015.

About BID

Bail for Immigration Detainees is an independent charity established in 1999 to challenge immigration detention in the UK. We assist detained asylum seekers and migrants in removal centres and prisons to secure release from detention through the provision of free legal advice, information and representation.

While detention exists, BID aims to challenge long-term detention and to improve access to justice for immigration detainees. We seek an immediate to end the separation of families for immigration purposes and to the detention of vulnerable people.

BID believes that asylum seekers and migrants in the UK have a right to liberty and access to justice. They should not be subjected to immigration detention.

Key Questions

- Why has the Government not addressed the issue of immigration detention – either through greater judicial oversight, the introduction of a time limit, or both?
- Why has the Government not included within the Bill any safeguards to ensure that there is, in practice, a presumption against the use of immigration detention?
- What justification has the Government used for its decision to legislate on mechanisms for release from detention, without also looking at the decision to detain?
- Why does the Government consider it appropriate that a foreign national who cannot be lawfully detained could be granted bail, with the negative connotation for their right to liberty that implies?
- What consideration has the Government given to the impact that limiting the provision of bail addresses for detainees will have on their ability to access justice?
- Does the Government consider that the detention of people who are unable to apply for bail as a result of not being able to access a bail address is likely to be lawful?

This Briefing

The Immigration Bill proposes a wide range of measures, covering illegal working, border security, and access to services. This briefing focuses primarily on changes to immigration bail and the provision of bail addresses.

BID is a member of the Immigration Law Practitioners' Association (ILPA) and the Refugee Children's Consortium (RCC). Each of those organisations has also produced briefings on this Bill, which cover other areas of concern. We would draw particular attention to the concerns raised in those briefings over proposed changes to appeals in Part 4 of the Bill.

General Principles

During its debate on the *Inquiry into the use of immigration detention* in September 2015, the House of Commons unanimously agreed to support the report's recommendations. Among these was a recommendation that a time limit for immigration detention of 28 days – other than in exceptional circumstances – be introduced.

BID is working to end the use of immigration detention. **We welcomed the recommendation of the inquiry that a maximum period of detention of 28 days should be introduced via statute, and believe that the Immigration Bill should be amended to include such a provision.** We remain wary that any time limit must not simply become the norm – detention has the potential to be harmful or unlawful from the very first day, and so the Home Office should operate in theory and in practice with a presumption against the use of detention. Any such time limit should be operated alongside a new and robust system for reviewing the decision to detain early in the period of detention, via some form of automatic court hearing and a statutory presumption that detention is to be used only exceptionally and for the shortest possible time. We hope that this issue can be explored further should the Bill reach Committee Stage.

Changes to Immigration Bail

BID recognises that existing laws and regulations around immigration detention, bail and support are complex, fragmented and in need of consolidation. Schedule 5 of the Bill seeks to do this.

It is the Home Office's stated policy that immigration detention be used as a last resort and for the shortest possible time. As was observed by the joint inquiry into immigration detention, this policy is "not being adhered to, or having its desired effect." We are concerned that the explanatory notes for Schedule 5 – reflecting the Government's intentions for the Bill, begin from the starting point that:

> "Prior [to this schedule] there were a number of provisions under which **a person who would otherwise have been held in immigration detention**, could be released or have avoided being detained altogether." [emphasis added].

We believe that, in attempting to devise a consolidated framework, it is inexcusable that the Government have not simultaneously addressed the use of immigration detention, alternatives and limits and restrictions.

The Government's decision to end the use of temporary admission and temporary release and to replace them with the new framework for immigration bail is indicative of the Government's attitude to people's right to liberty. The connotations of being 'released on bail' rather than 'temporarily admitted' are entirely negative; it appears that the Government is seeking to normalise the detention of all foreign nationals with irregular immigration status or outstanding claims and appeals.

The Secretary of State's power to detain a person for immigration purposes is limited by existing laws – provisions that this Bill does not seek to amend. A person may only be legally detained to allow investigation as to whether that person should be permitted to enter the UK, or for the purpose of removing the person from the UK – and then only for a "reasonable time".

We fail to see that an argument can be made for how a person who cannot be lawfully detained can be granted 'immigration bail'. Put simply – if detention is not possible, then there is nothing for them to be bailed from. Any suggestion otherwise would appear to be a move by the Government to give people – including those seeking decisions on their immigration cases – a negative label with little basis.

The futility of this attempt at consolidating the framework around temporary admission and bail without fundamental reform is even more apparent given the Home Office's continued misuse of immigration detention provisions as they currently exist. Over the 12 months to June 2015, 32,053 people had been detained under immigration powers for some period of time. Statistics on bail hearings are shown in the table below.

Immigration bail at the First-tier Tribunal (IAC) January – December 2013[1]			
		% of total number of applications received	% of applications fully heard (i.e. not withdrawn)
Bail applications received	12, 373		
Bail applications heard	12, 248		
Grants of bail	2, 717	22.18	34.68
Refusals of bail	4, 973	40.60	63.47
Withdrawals	4, 538	37.05	

In the year to 30 June 2014, 36% of people leaving detention were detained for seven days or less, and of these, 1% were bailed, compared with 60% who were removed. **But, of those people leaving detention who had been detained for 12 months or more, 30% were bailed, 24% were granted temporary admission or release, and 44% were removed.** Longer-term detainees were still less likely to be removed at the end of their detention. Of the 5 detainees who left Immigration Removal Centres in 2013 after spending 48 months or more in detention, only 20% were removed from the UK.

The technical matters presented in the Bill regarding grants of bail, conditions and procedures appear to be needlessly confused, and we believe that there will need to be considerable clarifying amendments laid in Committee. Provisions that blur lines of accountability and responsibility between the First Tier Tribunal and the Secretary of State are unnecessary and unwelcome, and we would suggest that the Government ought to reconsider them.

Bail Addresses

BID submitted a response to the Government's recent consultation, "Reforming support for failed asylum seekers and other illegal migrants". In that response, we draw particular attention to the proposed removal of section 4(1)c of the Immigration and Asylum Act 1999. We are disappointed that the drafting of this Bill has pre-empted the conclusions of that consultation.

Schedule 5, section 7 of this Bill empowers the Secretary of State to grant an address for the purpose of bail, while Schedule 6 amends the Immigration and Asylum Act 1999 to insert a new section 95A on providing support for failed asylum seekers who are unable to leave the UK.

However, the new section 95A would not be accessible to people who have not previously claimed asylum, and the powers in section 7 of schedule 5 would be exercised only when "the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power." It remains to be determined what will quantify an exceptional circumstance, **however the likelihood appears to be that the removal of section 4(1)c of the 1999 Act will result in a large number of detainees denied access to a bail address.**

For detainees who are unable to propose a private address to support their application for bail and who can no longer obtain such an address via Section 4(1)c bail support as it stands, release from detention on bail would be impossible in our view. Without section 4(1)c support from the Home Office, a detainee who would otherwise have relied on such a bail address will be unable to lodge

[1] Source: HM Courts &Tribunals Service, '*Bail management information period April 2012 to March 2013*' & '*Bail management information period April 2013 to December 2013*', produced for HMCTS Presidents' stakeholder meeting. This is the most recent full year for which data is available.

their application for release on bail. In BID's extensive experience it is normal practice for HMCTS hearing centres to refuse to list bail applications for a hearing without a bail address, save in very unique circumstances.

53% of BID's clients rely on a section 4(1)c bail address to support their application. Abolishing this provision would leave thousands of detainees unable to apply for bail, with the potential for their detention to become unlawful as a result.

Home Office Section 4(1)c bail accommodation: applications, grants by accommodation type, and refusals of support since January 2010

	Number of APPLICATIONS RECEIVED for s4 (1)c bail accomm[2]	Number of grants for **Initial Accomm**	Number of grants for **Standard Dispersal Accomm**	Number of grants for **Complex Bail Accomm**	Total number of grants for the year
2010	3,367	1,916	66	19	2001
2011	3,138	1,568	218	55	1841
2012	3,465	1,961	382	35	2378
2013	3,841	2,081	529	14	2624
2014	3635	2233	613	14	2860

(Source: Data obtained from the Home Office by BID through a series of FOI requests since 2011)

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[2] Some individuals made more than one application during this period.